IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

FRIDAY, THE 23RD NOVEMBER 2007 / 2ND AGRAHAYANA 1929

OP.No. 9680 of 2000(B)

PETITIONER:

M/S.VENAD CONDUCTORS PVT. LTD.,
C12, INDUSTRIAL ESTATE,PAPPANAMCODE,
TRIVANDRUM 19, REPRESENTED BY ITS MANAGING
DIRECTOR M.N.VISWANATHAN CHETTIAR.

BY ADV. SRI.A.M.SHAFFIQUE
SMT.PRIYA MANJOORAN

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY, GOVT. OF KERALA,\
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE COMMISSIONER OF COMMERCIAL TAXES,
GOVT. OF KERALA, THIRUVANANTHAPURAM 695 033.

3. THE ADDITIONAL SALES TAX OFFICER,
IIND CIRCLE, THIRUVANANTHAPURAM.

4. THE CHIEF ENGINEER (ELE.) (GI & MM),
KERALA STATE ELECTRICITY BOARD,
VYDYUTHI BHAVANAM, PATTOM,
THIRUVANANTHAPURAM.

R1 TO R3 BY GOVT.PLEADER SRI T.C.R.CHAND

R4 BY ADV. SRI.C.RAGHAVAN, SC, KSEB
SRI. ASOK M.CHERIYAN, SC, KSEB
SRI.A.SUDHI VASUDEVAN, SC, KSEB
SRI.C.K.KARUNAKARAN, SC FOR KSEB

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 23/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP.NOS.16122 & 22831/2000 IN OP.NO.9680/2000

Dismissed

23/11/2007 Sd/- P.R.RAMAN, JUDGE.

APPENDIX

PETITIONER'S EXTS:

EXT.P1 TRUE COPY OF THE LETTER DTD.25/5/94 BY THE 4TH RESPONDENT TO THE PETITIONER.

EXT.P2 TRUE COPY OF THE ORDER PASSED BY THE 3RD RESPONDENT DTD. 17/4/1998.

EXT.P3 TRUE COPY OF THE ORDER OF THE KSEB DTD. 26/9/98.

EXT.P4 TRUE COPY OF THE INVOICE (ENDORSEMENT) BY THE PETITIONER DTD. 13/8/98.

EXT.P5 TRUE COPY OF THE LETTER DTD. 3/5/99 BY THE CHIEF ENGINEER, KSEB, TO THE PETITIONER.

EXT.P6 TRUE COPY OF THE LETTER BY THE 2ND RESPONDENT DTD. 29/3/99.

EXT.P7 TRUE COPY OF THE NOTICE ISSUED BY THE 3RD RESPONDENT DTD. 17/7/99.

EXT.P8 TRUE COPY OF THE LETTER DTD. 2/8/99 BY THE PETITIONER TO THE 4TH RESPONDENT.

EXT.P9 TRUE COPY OF THE LETTER DTD. 28/7/99 BY THE PETITIONER TO THE 3RD RESPONDENT.

EXT.P10 TRUE COPY OF THE LETTER DTD.M25/9/99 BY THE 3RD RESPONDENT TO THE PETITIONER.

EXT.P11 TRUE COPY OF THE LETTER BY THE PETITIONER TO THE 4TH RESPONDENT.

EXT.P12 TRUE COPY OF THE POSTAL ACKNOWLEDGEMENT ACKNOWLEDGED BY THE 4TH RESPONDENT DTD.27/11/99.

EXT.P13 TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE SALES TAX OFFICER, THIRUVANANTHAPURAM DTD. 25/7/98.

EXT.P14 TRUE COPY OF THE LETTER BY THE INDIAN OVERSEAS BANK TO THE PETITIONER DTD. 18/4/2000.

EXT.P15 TRUE COPY OF THE REPRESENTATION DTD. 20/4/2000 BY THE PETITIONER TO THE CHIEF MANAGER, INDIAN OVERSEAS BANK.

EXT.P16 TRUE COPY OF THE REPRESENTATION DTD. 22/4/2000 BY THE PETITIONER TO THE COMMISSIONER OF COMMERCIAL TAXES, TRIVANDRUM.

EXT.P17 TRUE COPY OF THE LETTER DTD. 13/5/2000 BY THE INDIAN OVERSEAS BANK TO THE PETITIONER.

P.R.RAMAN, J.

O.P.No.9680 OF 2000

Dated this the 23rd day of November, 2007

JUDGMENT

Petitioner is a Private Limited Company incorporated under the provisions of the Companies Act, 1956. During the year 1994-95 the petitioner-Company supplied conductors, which is shortly called as "AAC & ACSR" to the Kerala State Electricity Board. In respect of the transaction in question the petitioner also filed Form No.9 return to the Additional Sales Tax Officer conceding the turnover and tax payable thereof. Since the goods supplied to the K.S.E. Board are inclusive of tax, the obligation to pay the tax liability is on the K.S.E. Board. However, in their communication dated 25/5/1994 the Electricity Board informed the petitioner that they will pay tax on concessional rate provisionally and will take up the matter with the Government for concession regarding the balance tax liability and in case such concession is not extended, the balance amount of tax also will be paid by them. Accordingly, the K.S.E. Board paid the tax at 4% on the goods supplied to them provisionally, which amount was admittedly paid over to the Government. However, at the

time of making the assessment order, Ext.P2, the question regarding the concession, if any, to be extended to the K.S.E. Board, was not decided. The Assessing Officer assessed the tax at 10%, as the petitioner could not prove that any concession was given to him or to the K.S.E. Board, as the case may be, in respect of the supply made. The balance tax liability less what has been paid by the petitioner was accordingly demanded, which comes to an amount of Rs.9,14,418/-. This is apart from the surcharge payable by the petitioner. There is no dispute that the balance tax as demanded was also paid by the petitioner. The K.S.E. Board also paid the difference in the tax less what has been paid by them to the petitioner. Therefore, as regards the tax liability is concerned, there is no further dispute between the parties. So however, by Ext.P7 the petitioner was demanded an amount of Rs.7,58,967/- being the penal interest imposed on him under Section 23(3) of the K.G.S.T. Act. Pursuant thereto the petitioner by Ext.P8 approached the K.S.E. Board for arranging the payment of penal interest as demanded in Ext.P7. By Ext.P9 the petitioner informed the additional Sales Tax Officer that without prejudice to his right under the act and law he opted to remit the interest as per the referred notice under Section 23(3) of the Act at reduced rate under Section 23A and requested the Officer to issue the demand in Form 24. By Ext.P10 dated 25/9/1999 the Department accepted the option exercised by the petitioner under Section 23(3) of the Act and allowed the reduction.

Thus, as against the outstanding amount of Rs.9,14,418/- the petitioner was given the benefit of the option exercised by him and after reducing the amount of Rs. 5,48,650/- from the original demand, the balance amount of Rs.3,65,768/- was demanded. The petitioner by Ext.P11 again took up the matter to the K.S.E. Board informing them of the reduction given to him by the Sales Tax Department and requested to arrange payment accordingly. Since the petitioner did not pay the reduced amount of Rs.3,65,768/- within the time as allowed by law, recovery proceedings were taken for realisation of the original amount of Rs.9,14,418/-. It is in those circumstances, the petitioner has approached this Court by filing this original petition.

2. The prayer made in this original petition is for a direction to the 4th respondent-K.S.E.B. to pay interest levied and reduced at the concessional rate under Section 23A as per Ext.P10 and also to quash Ext.P7 notice under Section 23(3) of the Act. There is no challenge against revenue recovery notice issued. The K.S.E. Board declares their liability to pay interest and a statement is filed by them. So however, no counter affidavit is filed by them. According to them, they have discharged the primary responsibility of paying the tax and hence if there is any short collection made by the petitioner or short assessment made by the Department, they are not responsible for the same. The Government Pleader however supported the demand raised.

Heard the parties.

3. In this case admittedly the petitioner opted to pay interest on concessional rate under Section 23 A of the Act of course without prejudice his right under the act and law. Therefore, it was open to him to challenge the demand for interest under Section 23(3) in accordance with the act and law. This is not done. I have already referred to the prayer made in this original petition. According to the petitioner, the interest payable by him is to be reimbursed by the K.S.E. Board. That is not a challenge against the demand for interest. Even though he sought to quash Ext.P7, no grounds are urged in this original petition contending that he is not liable to pay interest under Section 23(3) of the Act. In such circumstances, Ext.P7 cannot be quashed. The liability to pay tax is always on the seller of the goods. The Sales Tax Act enables him to collect it from the buyer. The mere fact that he has not collected tax from the buyer may not be a ground for non-payment of the tax to the Department. When he has not paid the tax to the Department and this is a case where return has been filed, this case is not covered by the decision reported in **Maruthi Wire Industries Pvt. Ltd. v. Sales Tax Officer, Mattancherry and others ((2001) 122 STC 410).** Further, the petitioner himself has opted to pay interest under Section 23A. Consistent with the stand made in Ext.P7 he should have remitted the reduced interest and then challenge the levy, if any. So far as there is no challenge at all as

against the levy of interest under Section 23(3) in this original petition, no relief can be granted to the petitioner. As against the K.S.E.B. is concerned, short liability if any made is contractual in nature and therefore I am not granting any relief to the petitioner. The right of the petitioner is left open.

Original Petition fails and it is accordingly dismissed with costs.

P.R.RAMAN,
Judge.

kcv.